

Montana DNRC Forested Trust Land Habitat  
Conservation Plan (HCP)

## **Transition Land Strategy**

Montana Department of Natural Resources (DNRC)  
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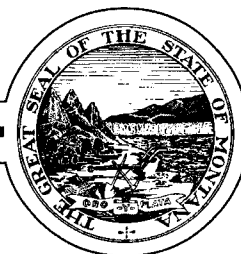


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### **Montana DNRC Forested Trust Lands HCP Draft Strategy for Transition Lands**

The Montana Department of Natural Resources (DNRC) manages approximately 735,000 acres of forested school trust lands, mostly in western Montana. In pursuing long-term management goals, the DNRC is working with the US Fish and Wildlife Service (USFWS) to develop a habitat conservation plan (HCP) and application for an incidental take permit, as authorized by section 10(a)(1)(B) of the Endangered Species Act.

This document describes the "Transition Lands" strategy for the Montana DNRC Habitat Conservation Plan (HCP). The strategy addresses how lands will be moved into and out of the HCP as part of the process of DNRC acquiring and disposing of lands over time. The strategy was collaboratively developed by DNRC and USFWS.

Interested parties are encouraged to review and comment on the conservation strategies. Written comments are due by November 20, 2005, 45 days after the release of the strategies. The project team also welcomes questions or comments by phone, e-mail, or at scheduled meetings. The purpose of the public review is to identify areas of concern with the conservation strategies or the planning process so the planning team can consider them prior to completing the Draft HCP/environmental impact statement (EIS). This public review period may also be used to identify issues, in addition to those identified during the formal scoping period, to further consider in the environmental analysis.

The conservation strategies do not represent the full draft HCP. There are other mandatory elements of an HCP that are still being developed, including anticipated levels of impact/take, changed and unforeseen circumstances, funding assurances, and alternative actions to taking. DNRC's current forest management program and existing species conservation measures are described in the species account documents that are available on the project website. DNRC and USFWS will be preparing a joint EIS, in combination with the HCP, that will provide detailed description and analysis of the anticipated effects of the HCP and other alternatives. There will be another public involvement and review process concurrent with the release of the draft HCP/EIS.

For additional information and conservation strategies for the other HCP covered species, please view our website <http://www.dnrc.state.mt.us/hcp/>, email us at [dnrchcp@mt.gov](mailto:dnrchcp@mt.gov), or contact:

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# TRANSITION LAND STRATEGY

## For

### MONTANA DNRC FORESTED TRUST LANDS HCP

Version: 4, Revised: 5/8/05

#### **SECTION 1 – INTRODUCTION AND STRATEGY OBJECTIVES**

The Trust Land Management Division (TLMD) of the Department of Natural Resources and Conservation (DNRC) manages about 5.2 million surface acres of trust land, of which about 720,000 acres is forested. DNRC plans to place approximately 550,000 trust land acres under the Habitat Conservation Plan (HCP).

TLMD's mission is to: *"Manage the State of Montana's trust land resources to produce revenue for the trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land."* This mission statement encapsulates the intent of the Enabling Act of 1889 and Montana's Constitution.

While it is desirable to consider and address environmental factors to the extent practicable and as required by various laws, these factors must be balanced against the short and long-term revenue generating potential of trust lands. Protecting this future income-generating capacity of the land includes not only forest management activities, but other income producing activities such as: grazing; mineral, oil and gas exploration, development and extraction; recreation; real estate uses; and other future uses not yet identified.

In order for DNRC to meet its short and long-term fiduciary responsibilities and overall trust goals, it is necessary for DNRC to maintain flexibility in transitioning lands into and out of the HCP over the 50-year permit period.

#### **Strategy Purpose and Objectives**

The intent and purpose of this Transition Land Strategy is to describe the mechanism for moving DNRC lands into or out of the Habitat Conservation Plan (HCP) over the 50-year permit period in order to ensure adequate remaining levels of conservation for HCP covered species.

To maintain the integrity of the overall conservation provided under the HCP, this transition land strategy does two important things:

- First, it provides long-term biological assurances by setting limits on the amount of land that DNRC can remove from the Incidental Take Permit (ITP), and more strictly limits the amount of land that DNRC can remove in the grizzly bear recovery zones, Cabinet-Yaak Ecosystem (CYE) non-recovery occupied grizzly bear habitat, and bull trout core habitat.
- Second, it provides the opportunity and framework for interested parties to extend conservation benefits on DNRC lands through the purchase of conservation easements or similar instruments pursuant to existing state laws.

In addition to these conservation benefits, this strategy also provides for continuation of DNRC's active program of land acquisition, development and disposition, which includes but is not limited to land transfers, development, sales, purchases, and exchanges in order to realize more short or long-term benefits to the Trusts. Once lands are removed from the HCP, future activities on those lands are no longer covered under the HCP or ITP, except as otherwise provided under Section 2.C.

In carrying out such an active transition land program, DNRC commits to the terms outlined in this HCP Transition Land Strategy. DNRC may add or remove lands from the HCP pursuant to this transition land strategy. Identification of lands for addition to or removal from the HCP will be accomplished under the guidance of DNRC's Real Estate Management Bureau (REMB) Programmatic Plan and in coordination with the Forest Management Bureau.

Lands covered under the HCP are termed "permit lands" while lands identified for removal from the HCP are termed "transition lands". The process of adding or removing lands from the HCP is described below in Section 2.

## **SECTION 2 – ADDING AND REMOVING LANDS FROM THE HCP**

### **A. NOTIFICATION AND REVIEW OF LAND TRANSACTIONS**

DNRC and USFWS will hold an annual meeting to facilitate the exchange of information related to proposed and completed transactions [by DNRC] involving permit lands. The Parties will mutually agree upon the date for this annual meeting. At such meetings, DNRC will notify the Service of any completed or known proposed transfers, purchases, sales, developments, leases, or exchanges expected to occur within the upcoming year involving permit lands. Additional meetings may be convened on a more frequent basis or incorporated into the scheduled HCP comprehensive reviews with the mutual consent of both Parties.

DNRC will notify the Service of proposed or completed real estate transactions involving all permit and non-permit lands within the Planning Area that have HCP covered species. DNRC further agrees to not remove permit lands in grizzly bear recovery, Cabinet-Yaak Ecosystem (CYE) non-recovery occupied<sup>1/</sup> grizzly bear habitat, or bull trout core habitat areas without prior notice to the Service and pursuant to Section 2.C. Closing documents will be made available to the Service upon request.

As long as the land transactions meet the commitments and intent of this transition land strategy, it will be considered a minor amendment to add or remove lands from the permit. While the Service shall not have the power to veto any land transactions, the Service maintains the right to suspend or revoke the ITP if the DNRC does not comply with the commitments and intent of this transition land strategy.

1        **B. ADDING LANDS TO THE HCP**

2        Upon notification to the Service, DNRC may propose to add existing non-covered lands  
3        or lands acquired by transfer, purchase, or exchange to the HCP and ITP that are within  
4        the Planning Area. The Planning Area includes lands within the geographic range of  
5        DNRC's Northwest, Southwest and Central Land Offices. The following information  
6        will be provided to the Service by DNRC for lands proposed for inclusion:  
7

- 8            1. a map and associated list identifying the legal description and acreage of proposed  
9            lands;  
10
- 11           2. a brief written analysis describing the current conditions of the proposed lands in  
12           relation to the relevant commitments under the HCP and whether or not the  
13           inclusion and management of those lands would be within the level of take  
14           authorized by the ITP. No additional mitigation measures beyond those contained  
15           in the HCP will be required for the proposed lands unless the management of  
16           those lands increases take beyond the level authorized in the ITP. If the level of  
17           take associated with managing the proposed lands is greater than the take  
18           authorized in the ITP, then DNRC will describe the planned mitigation measures  
19           and timelines that will be applied to address departures from current commitments  
20           under the HCP.  
21
- 22           3. a statement that the DNRC will incorporate the relevant commitments of the HCP  
23           into the management of the proposed lands.  
24
- 25           4. Upon receipt of the information described in items 1-3 above, the Service shall  
26           approve or deny within 60 days the request to add lands to the HCP and ITP.  
27           Upon approval, the proposed lands will become covered lands under the HCP  
28           through a minor amendment. If proposed lands are denied, then the Service and  
29           DNRC will collaboratively work on a solution.  
30

31        **C. REMOVING LANDS FROM THE HCP**

32        DNRC may remove lands covered under the HCP pursuant to this section. DNRC, at its  
33        sole discretion, may request that the recipient of the disposed land commit to managing  
34        the disposed or leased land in accordance with the HCP and this agreement. DNRC is  
35        not required by the HCP or ITP to require continuation of the commitments of the HCP  
36        on the disposed or leased lands. If DNRC leases, sells partial or total rights, or exchanges  
37        permit lands, and the acquiring entity is a federal or state agency, a Not-for-Profit  
38        Conservation Organization, or any other non-federal entity that has an existing ITP or an  
39        agreement with the Service that the permit lands leased or disposed by DNRC will be  
40        managed in a manner which provides similar or greater benefits to covered species than  
41        does the HCP, then that acreage will not be counted against the 'net loss commitment'  
42        under Section 2.C.  
43

44        **Notification Process**

45        If permit land in grizzly bear recovery, CYE non-recovery occupied grizzly bear habitat,  
46        or bull trout core habitat areas are proposed for removal from HCP coverage and are not

1 expected to remain under conservation measures similar to those in the HCP, then a  
2 Federal, State, or non-federal land management or conservation agency or entity would  
3 have 60 days upon notification by DNRC to respond with a Letter of Intent and Proposal  
4 to purchase the land outright or to purchase a conservation easement or similar  
5 instrument pursuant to existing state laws. The purchase shall be completed within 24  
6 months at full market value unless otherwise extended at the sole discretion and benefit  
7 of the State. If no response is received within 60 days, DNRC will continue to pursue the  
8 lease, development, or disposal of such permit lands within grizzly bear recovery, CYE  
9 non-recovery occupied grizzly bear habitat, and bull trout core habitat areas. If, however,  
10 a conservation easement or similar instrument is placed on Permit lands within the 24-  
11 month period, the State will be allowed to manage these permit lands in perpetuity  
12 according to the terms of the agreement or similar instrument.  
13

14 In addition to the purchase of a conservation easement or similar instrument,  
15 conservation buyers may elect to pursue an option with the State to purchase the parcel in  
16 the future. If the State chooses to grant such an option, then an upfront fee will be  
17 assessed along with a specified closing date to exercise this option. Specific terms such  
18 as the fee amount and specified closing date will be negotiated at the time of purchasing a  
19 conservation easement or similar instrument.  
20

### 21 **Net Loss Commitment**

22 Over the 50-year permit period, DNRC shall limit the net loss of permit lands in the  
23 grizzly bear recovery, CYE non-recovery occupied grizzly bear habitat, and bull trout  
24 core habitat areas to 5%<sup>2/</sup> of the baseline of permit lands in these habitat areas originally  
25 covered under the HCP. This would allow approximately 10,990 acres out of 219,800  
26 acres of these habitat areas to be transitioned out of the HCP.<sup>3/</sup> In addition, DNRC will  
27 be allowed to exceed the 5% threshold for a period no longer than five years. If the 5%  
28 threshold level is exceeded, DNRC shall notify the Service with a description and  
29 initiation date when this exception was invoked. This temporary exception is necessary  
30 to allow DNRC the flexibility to drop below the threshold level by an additional 1%  
31 (approximately 2,200 acres) in order to respond to opportunities or to account for  
32 possible delays associated with complex land transactions such as land exchanges.  
33

34 Furthermore, DNRC shall limit the net loss of permit lands in the HCP to no more than  
35 10%<sup>2/</sup> of the original baseline for all other permit lands. This would allow approximately  
36 33,320 acres out of 333,200 acres of land outside the grizzly bear recovery, CYE non-  
37 recovery occupied grizzly bear habitat, and bull trout core habitat areas to be transitioned  
38 out of the HCP. DNRC will be allowed to exceed the 10% threshold for a period no  
39 longer than eight years. If the 10% threshold level is exceeded, DNRC shall notify the  
40 Service with a description and initiation date when this exception was invoked. This  
41 temporary exception is necessary to allow DNRC the flexibility to drop below the  
42 threshold level by an additional 1% (approximately 3,332 acres) in order to respond to  
43 opportunities or to account for possible delays associated with complex land transactions  
44 such as land exchanges.  
45



Permit lands within the Planning Area that are removed from coverage within these “net loss” commitments and timelines will be removed from the HCP and ITP through a minor amendment as stated in Section 3.

**D. FEDERAL CONDEMNATION AND UNFORESEEN CIRCUMSTANCES**

DNRC shall not be required to replace habitat lost due to federal condemnations or unforeseen circumstances that occurs on permit lands. Furthermore, habitat losses due to condemnation or unforeseen circumstances do not count towards the net loss thresholds described under Section 2.C. The Parties’ obligations relating to the condemned or significantly impacted permit lands under the HCP and this agreement shall be terminated.

**E. RIGHTS AND AUTHORITIES PRESERVED**

Except as otherwise specifically provided in this agreement, nothing herein contained shall be deemed to restrict the rights, privileges, and powers of the State of Montana or DNRC to manage the use of, or exercise all of the rights incident to land ownership associated with the permit lands. Nothing herein contained shall be interpreted to restrict the authority of the Service to administer the ITP with respect to the permit lands in accordance with this agreement and the Endangered Species Act (ESA).

**SECTION 3 – HCP MINOR AMENDMENTS**

Lands removed from or added to the HCP pursuant to Section 2 of this transition land strategy are considered a minor amendment and do not require amendments to the Biological Opinion (BO), ITP or HCP.

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**ENDNOTES:**

<sup>1/</sup> The Cabinet-Yaak Ecosystem occupied lands will be removed from the 5% threshold and placed in the 10% threshold category when grizzly bear populations reach stable levels described in the Grizzly Bear Conservation Strategy for DNRC Scattered Lands.

<sup>2/</sup> The 5 and 10% threshold limits were determined by using the acreages represented under Alternatives C & D of the REMB Programmatic EIS. These alternatives estimate that DNRC’s proportionate share in the projected growth over the next 25 years would be approximately 30,000 to 40,000 acres. Since the HCP covers a 50-year period, the amount of DNRC land that could be potentially developed would be upwards of 80,000 acres. Given those numbers, the 5 and 10% threshold levels would provide about half the total acreage needed to meet these projected growth needs. Also, most of DNRC lands west of the divide are included in the HCP where much of the growth is expected to occur over the next 25 to 50 years. The 5% and 10% threshold commitments represent DNRC’s willingness to more strictly limit the amount of land that could be removed in specific habitat areas.

<sup>3/</sup> Acreage figures under Section 2.C. are “approximate” due to ongoing cadastral work around the state which results in corrections to estimated PLSS corners and area calculations. This requires DNRC to periodically adjust ownership boundaries (GIS layers) and to recalculate acreage figures.